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Paper 1  
Entered: 14 June 2012

UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

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Patent Interference 105,901 (LG)  
Technology Center 1600

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**LIEPING CHEN,**

Application 12/347,492,  
Junior Party,

v.

**GORDON FREEMAN, VASSILIKI BOUSSIOTIS,  
TATYANA CHERNOVA, and NELLY MALENKOVICH**

Patent 7,038,013,  
Senior Party.

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**DECLARATION**

Before: LORA M. GREEN, *Administrative Patent Judge.*

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**Part A**

**Declaration of Interference**

Consistent with discussion during a conference call between counsel for Party Chen and Party Freeman on 06 June 2012 in related interferences 105,884; 105,885; and 105,887; an interference is declared between the above-identified parties. 35 U.S.C. § 135(a); 37 C.F.R. § 41.203(b).

Details for the application, patent, count and claims designated as corresponding or as not corresponding to the count appear in Parts E and F of this DECLARATION.

A claim of an involved application or involved patent which is *not* designated as corresponding to *any* count is not "involved" in the interference within the meaning of 35 U.S.C. § 135(b).

For a United States patent or published application listed in this Declaration, see

<http://patft.uspto.gov/>

See also

<http://portal.uspto.gov/external/portal/pair>

for prosecution histories available to the public.

**Part B**

**Judge Managing the Interference**

Administrative Patent Judge Lora M. Green has been designated to manage the interference. 37 C.F.R. § 41.104(a).

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**Part C**

**Standing Order**

A Trial Division STANDING ORDER (8 March 2011) (Paper 2)  
accompanies this DECLARATION.

The STANDING ORDER applies to this interference, including the  
provisions related to Electronic Filing. See ¶ 105, pages 15-17

**Part D**

**Initial Conference Call and Motions Lists**

Conference Call

In the conference call on 06 June 2012, counsel for Chen and Freeman  
indicated that the motions would be essentially the same as those filed in the  
related interferences. Thus, accompanying this Declaration is an order  
authorizing motions. If the parties feel that additional discussions as to the  
motions lists are necessary, they can contact the Board to set up a conference  
call.

Time periods for taking action during the motions phase are set out in  
an order accompanying this Declaration.

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**Part E**  
**Identification of the Parties**  
**Assignment of Exhibit Numbers**  
**Initiating Settlement Discussions**

Junior Party

Inventors: LIEPING CHEN

Application: Application 12/347,492  
filed 31 December 2008

Pat. Publication US 2009/0274666

Title: B7-H1, A Novel Immunoregulatory Molecule

Real party in interest: Mayo Foundation for Medical Education and  
Research

Senior Party

Inventors: GORDON FREEMAN,  
VASSILIKI BOUSSIOTIS,  
TATYANA CHERNOVA, and  
NELLY MALENKOVICH

Patent: U.S. Patent 7,038,013  
issued 02 May 2006  
based on application 10/002,775  
filed 05 December 2001

Pat. Publication US 2002/0102651

Title: B7-4 Polypeptides and uses thereof

Real party in interest: Dana-Farber Cancer Institute, Inc.

### Assignment of Exhibit Numbers

Senior party: Exhibit Numbers 1001 through 1999.

Junior party: Exhibit Numbers 2001-2999.

**Board:** Exhibit Numbers 3001-3999.

## Initiating Settlement Discussions

STANDING ORDER ¶ 126 (Paper 2, page 37)

The senior party is responsible for initiating settlement discussions required by the STANDING ORDER.

## Part F

## Counts and Claims of the Parties

*Count 1*

An isolated polypeptide comprising the amino acids having the sequence set forth in Chen SEQ ID NO:1 or Freeman SEQ ID NO: 4.

The claims of the parties are:

Chen: 1, 2, 4, 6, 11-13, 36-38, 40-44, 49-59, 62-71, 77,  
78, and 80-124.

Freeman: 1-14

The claims that correspond to Count 1 are:

Chen: 6, 38, and 107-114

Freeman: 1-14.

The claims that do not correspond to Count 1 are:

Chen: 1, 2, 4, 11-13, 36, 37, 40-44, 49-59, 62-71, 77, 78,  
80-106, and 115-124

Freeman: None

1           With respect to Count 1, the parties are accorded an earlier  
2 constructive reduction to practice (i.e., benefit for the purpose of priority) of  
3 the following applications:

4           Chen:       Application 12/347,492, filed 31 December 2008;  
5                       Application 09/649,108, filed 28 August 2000;  
6                       Application 09/451,291, filed 30 November, 1999.

7           Freeman:   Application 10/002,775, filed 02 November 2001;  
8                       Application 09/644,934, filed 23 August 2000;  
9                       Provisional application 60/150,390,  
10                      filed 23 August 1999.

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Application 12/347,492,  
Junior Party,

V.

GORDON FREEMAN, VASSILIKI BOUSSIOTIS,  
TATYANA CHERNOVA, and NELLY MALENKOVICH

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1 **Part H**

2 **Order Form for Requesting File Copies**

3 When requesting file copies, a party shall use STANDING ORDER  
4 Form 4 (page 68).

5 Use of form 4 will expedite processing of any request.

6 A party should attach to any request for file copies a photocopy of  
7 Part E of this DECLARATION with a hand-drawn circle around the patent  
8 and application files for which a copy of a file wrapper is requested.

9 The parties are advised that a single order for file copies may be filled  
10 by the Office of Public Records in more than one package. STANDING  
11 ORDER ¶ 109.2 (Paper 2, pages 22-24).

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13 **Part I**

14 **Required Paragraph of Affidavits and Declarations**

15 The Board has experienced cases in which a witness has belatedly  
16 advanced reasons why the witness would be unable to appear for cross  
17 examination at a reasonable time and place in the United States.

18 Consequently, to prevent surprise and hardship to the party relying on  
19 the testimony of a witness, the following paragraph must be included on the  
20 signature page of all affidavits (including declarations) filed in this case.

21 STANDING ORDER ¶ 157.2 (Paper 2, page 49).

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23 In signing this [affidavit [declaration]], I understand that the  
24 [affidavit [declaration]] will be filed as evidence in a contested  
25 case before the Board of Patent Appeals and Interferences of  
26 the United States Patent and Trademark Office. I acknowledge  
27 that I may be subject to cross examination in the case and that



1 cross examination will take place within the United States. If  
2 cross examination is required of me, I will appear for cross  
3 examination within the United States during the time allotted  
4 for cross examination.

cc (via electronic mail):

Attorney for Chen:

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